

NEW YORK CITY
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
ENVIRONMENTAL CONTROL BOARD

BOARD MEETING

Training Room 143, 12th Floor
100 Church Street, New York, New York

August 25, 2016

9:25 A.M. to 10:09 A.M.

August 25, 2016

MEMBERS PRESENT:

Shari Dawkins, Esq. - Department of Health & Mental Hygiene
Fidel F. Del Valle, Esq. - Chair, OATH
Shamonda Graham - Department of Buildings
Madelynn Liguori, Esq. - Department of Sanitation
Elisabeth Prael, Esq. - Fire Department
Russell Pecunies, Esq. - Department of Environmental Protection
Matthew Smith - Police Department
Thomas D. Shpetner, Esq. - Appointed Member
Douglas S. Swann - Appointed Member

ALSO PRESENT:

Simone Salloum - Assistant General Counsel, OATH
Frances Shine - Secretary to the Board, OATH

Rachel Amar - Special Assistant to the Commissioner, OATH
Helaine Balsam, Esq. - Deputy General Counsel, OATH
Amy Bedford - Business Integrity Commission
Denis Brogan - Assistant General Counsel, OATH
John Burns - First Deputy Commissioner, OATH
Vanessa Caughman - Supervising, Computer Service Technician, OATH
Kelly Corso, Esq. - Assistant Director of Adjudications, OATH
Fana Garrick - Creative Services Coordinator, OATH
David Goldin, Esq. - Administrative Justice Coordinator, Mayor's Office
Diana Haines - Assistant General Counsel, OATH
Will Hughes - Office of Management & Budget
Vivienne Kahng - Staff Attorney, Appeals, OATH
Mark H. Leeds, Esq. - Special Senior Counsel, OATH
Nancy Lin - Office of Management & Budget
Maria Marchiano - Deputy Commissioner/Chief Clerk, OATH
Mariko Matsuyoshi - Data Analyst, OATH
Tynia Richards - Deputy Commissioner, General Counsel, OATH
Peter Schulman, Esq. - Assistant Director of Adjudications, OATH
Amy Slifka, Esq. - Deputy Commissioner, OATH
Thomas Southwick, Esq. - Supervising Attorney, Appeals, OATH
Doris Stewart - Department of Transportation

August 25, 2016

INDEX

	Page
Mr. Fidel Del Valle, Esq.	4
Ms. Madelynn Liguori, Esq.	4
Ms. Amy Slifka, Esq.	4
Ms. Shamonda Graham	6
Mr. Thomas Shpetner, Esq.	12
Ms. Simone Salloum, Esq.	13
Mr. Russell Pecunies, Esq.	15
Ms. Kelly Corso, Esq.	17
Ms. Helaine Balsam, Esq.	20

1 August 25, 2016

2 (The board meeting commenced at 9:25
3 A.M.)

4 MR. FIDEL DEL VALLE, CHAIR, OATH: Good
5 morning, everyone. Is there a motion to adopt
6 the minutes from the last meeting? They are
7 adopted? I think we'll start -- excuse me?

8 MS. MADELINE LIGUORI, ESQ., DEPARTMENT
9 OF SANITATION: I have to abstain. I wasn't at
10 the last meeting.

11 MR. DEL VALLE: Oh, okay. Thank you.
12 Amy Slifka will give us an update on exciting
13 statistics from Environmental Control Board
14 hearings.

15 MS. AMY SLIFKA, ESQ., DEPUTY
16 COMMISSIONER, OATH: Good morning, everybody. I
17 think most of you know that this is. This is the
18 quarterly presentation and basically it's a
19 number of violations received by OATH ECB broken
20 down by issuing agency, a quarterly comparison of
21 the violations received and heard and decisions
22 rendered, a look at the last time from hearing to
23 decision date, a look at the decision results for
24 each of the issuing agencies, and lastly, a look

1 August 25, 2016

2 at most commonly issued violations by agency and
3 appeals.

4 Okay. Okay, that's not going to work.

5 Okay. There we go. That'll work. Okay.

6 So, as you can see, the summons received
7 by DSNY, there's been an increase from, 21
8 percent increase from the first quarter of
9 calendar year '16 to the second quarter; DOB,
10 there's been a 23 percent increase; DOT, a 19
11 percent increase; FDNY, a 14 percent increase;
12 DEP, a four percent increase; and DOHMH, a 20
13 percent increase. I'm hitting the wrong button
14 here. Okay. Sorry.

15 Parks, 104 percent increase, which is
16 kind of seasonal. It makes sense. NYPD, 18
17 percent increase. DoITT, there's been a 56
18 percent decrease. BIC, a 76 percent increase, 21
19 to 37; and Landmarks, a 21 percent decrease, 29
20 to 23. Okay.

21 So summons received by ECB comparing the
22 second quarter of 2015 calendar year and the
23 calendar year of 2016. As you can see, DSNY,
24 there's been a 13 percent increase from 117,525,

1 August 25, 2016
2 to 133,307. DOT there's been 108 percent
3 increase from 7,404 to 15,403. DOB, again,
4 there's been an 11 percent increase; FDNY,
5 another 11 percent increase; DOHMH, a six percent
6 increase; NYPD, a 91 percent increase from 2,639
7 to 5,040; DEP, there's been a decrease of nine
8 percent; Department of Parks and Recreation, a
9 seven percent increase. DoITT, a 79 percent
10 decrease from 280 to 60. And BIC, a 429 percent
11 increase from seven to 37, the winner. From
12 Landmarks, it's a 63 percent decrease, 62 to 23;
13 and Agency Code Missing, 29 percent decrease; and
14 Miscellaneous, a 36 percent decrease. Overall,
15 there's been a 17.4 percent increase in summonses
16 received. Yes.

17 MS. SHAMONDA GRAHAM, DEPARTMENT OF
18 BUILDINGS: You, you have the section Agency Code
19 Missing, so then what is captured in
20 miscellaneous?

21 MS. SLIFKA: Miscellaneous is Starrett
22 City, Peter Cooper Village--

23 MS. GRAHAM: Okay.

24 MS. SLIFKA: Those, those areas. Okay?

1 August 25, 2016

2 MS. GRAHAM: Thank you.

3 MS. SLIFKA: Yep. Okay. So total
4 summonses heard: DSNY, there's been a one
5 percent increase; DOB, a 15 percent increase; and
6 DOHMH, same 15 percent increase; Fire Department,
7 a two percent increase; DEP, a six percent
8 increase; DOT, it's a 153 percent increase in
9 cases heard from 1,840 to 4,659; NYPD, a 55
10 percent increase, from 1,686 to 2,619; and DoITT,
11 a 210 percent decrease from 453 to 220;
12 Department of Parks and Recreation, a two percent
13 decrease; BIC, a 67 percent increase; and
14 Landmarks, 14 percent increase. And overall,
15 again, there's been an increase of 13.5 percent
16 from 47,039 to 53,408.

17 Okay. Decisions rendered -- okay, so
18 DSNY, it's a one percent increase; DOB is seven
19 percent increase; DOHMH, a 10 percent increase;
20 and FDNY, a two percent increase; DOT, it went up
21 129 percent from 1,484 to 3,405; DEP, a eight
22 percent increase; NYPD, a 60 percent increase
23 from 1,578 to 2,531; Department of Parks, a two
24 percent increase; DoITT, a 51 percent decrease;

1 August 25, 2016

2 BIC, a grand total of 300 percent increase from
3 one to four; Landmarks, a 45 percent increase.
4 And basically, overall, there's been a 10.4
5 increase in decisions rendered.

6 Okay. So currently, we're getting
7 decisions, 84 percent of our decisions are down a
8 little bit from the first quarter of 2016 to the
9 second quarter 2016, and are done within 84 days
10 -- 84 percent are done in less than 10 days, and
11 98 percent are done in less than 20 days. Okay.

12 And decisions rendered after the
13 hearings, so overall, dismissal rate, it's a 59.5
14 percent, in 2015 it was 59.5 percent in violation
15 versus 39.9 percent dismissal. In the second
16 quarter of 2016, it's 58.3 percent in violation
17 and a 41.1 percent dismissal rate. So with
18 regard to the separate agencies, DSNY, it's a 60
19 percent dismissal rate and a 40 percent in
20 violation rate. With DOB, it's a 78 percent in
21 violation rate and a 22 percent dismissal rate.
22 DOT, it's a 62 percent in violation rate and a 38
23 percent dismissal rate. Fire Department, 88
24 percent in violation, 10 percent dismissal, two

1 August 25, 2016
2 percent are slips. DEP, 84 percent in violation
3 and nine percent dismissal. And Parks, 54
4 percent dismissal, 46 percent in violation.
5 DOHMH is a 58 percent in violation, 42 percent
6 dismissal. Parks, it's a 54 percent in
7 violation, 46 percent dismissal. DoITT, it's a
8 64 percent dismissal, 36 percent in violation.
9 BIC, it's a 75 percent in violation, 25 percent
10 dismissal. And Landmarks, a 75 percent in
11 violation and a 25 percent dismissal.

12 Most commonly issued: for DOT, it's
13 construction material or equipment stored on the
14 street without a permit and it's failure to
15 comply with terms and conditions of the permit
16 and failure to permanently restore the cut in the
17 required time. For NYPD, it's unlicensed mobile
18 food vendor, it's vending within 10 feet of a
19 driveway, subway, or crosswalk, or next to a
20 hospital, and it's unpermitted food cart. For
21 DOB, it's failure to maintain your elevator bank
22 system, it's work without a permit, and it's
23 failure to comply with the order of the
24 commissioner. And for DSNY, it's failure to

1 August 25, 2016

2 clean 18 inches into the street, dirty sidewalk,

3 dirty area -- that's DSNY. And DEP, it's failure

4 to submit an annual test report for backflow

5 preventer or it's failure to install the backflow

6 preventer, or it's fail to keep or have available

7 for inspection your noise mitigation plan. For

8 FDNY, it's inspection and testing, fire

9 protection systems, failure to prevent

10 unnecessary and unwarranted alarms, and fire

11 protection systems just not functioning properly.

12 DOHMH, it's failure to eliminate rodent

13 infestation shown by active rodent signs and

14 failure to eliminate conditions conducive to

15 rodent debris, and failure to eliminate

16 conditions conducive to pests, garbage can

17 spillage. Landmarks, it's work without or in

18 violation of certificate of approval. And then

19 it's miscellaneous work without a certificate of

20 approval and then it's work without a permit or

21 certificate of approval for your flag or sign.

22 For DoITT, it's failure to provide working public

23 pay telephones and operator services, it's

24 required sign missing and impermissible as per

1 August 25, 2016
2 the requirements of the subsection, and fail to
3 clean and maintain public telephone. For Parks,
4 it's failure to comply with directions or
5 prohibitions on signs, unauthorized consumption,
6 possession of alcoholic beverages, and
7 unauthorized vending. And for BIC, it's employed
8 individuals without their approved ID card,
9 failure to register wholesale and/or market
10 business as per the Code, and failure to obtain
11 an identification card.

12 So as far as appeals, you can see the
13 numbers there. DOB, we had 215; DSNY, 169; Fire,
14 94; Health, 55; DEP, 19; DOT, 33; DoITT, 20;
15 NYPD, 13; and Parks, just one, for a total of
16 619.

17 Total number of defaults, for April, May
18 and June of 2016, it was 87,989, 73.9 of those
19 were DSNY, 8.2 was DOT, and 5.1 was DOB. And
20 that's it. Any questions?

21 MR. THOMAS SHPETNER, APPOINTED MEMBER:
22 Yes, Amy, one quick one. The dismissal rates by
23 agency, maybe at the next meeting or next
24 quarter, we could do a comparison of another, of

1 August 25, 2016
2 maybe the prior quarter or the prior year, the
3 second quarter of 2016. And the reason I ask is
4 that I think I saw some improvements. I remember
5 NYPD had a much higher, I believe, they had a
6 much higher dismissal rate than they do
7 currently. So it's improving in other words.
8 Maybe they're writing better tickets, maybe we
9 have better outcomes because we redesigned the
10 form. So I'm not sure what it would be
11 attributable to, but that would be something
12 interesting to, just as a governance matter to
13 discuss.

14 MS. SLIFKA: Okay.

15 MR. SHPETNER: It seems like I saw
16 improvement in the stats, but I can't remember
17 precisely.

18 MS. SLIFKA: Sure. We'll see what we
19 can do there. We should be able to do that. Any
20 other questions? Okay. Thank you.

21 MR. DEL VALLE: That was my recollection
22 too.

23 MR. SHPETNER: Yeah, I, I--

24 MS. GRAHAM: It is.

1 August 25, 2016

2 MR. SHPETNER: I mean, we'd spent a lot
3 of time on those forms, for example. Maybe that
4 helped. I don't, you know, it'd be good to know.

5 MR. DEL VALLE: I hope so.

6 MR. SHPETNER: Gains without facts
7 are[unintelligible].

8 MR. DEL VALLE: It just makes us
9 hopefully feel better anyway. They look
10 prettier. We're now going to have Simone Salloum
11 introduce proposed rules.

12 MS. SIMONE SALLOUM: So up first --
13 Simone Salloum, Assistant General Counsel of
14 OATH, we have the proposal for the repeal of the
15 Department of Transportation penalty schedule,
16 which is located in 48 R.C.N.Y. 3-124 and this is
17 kind of part of the whole process that OATH is
18 undertaking to move the penalty schedules out of
19 the OATH rules and into the respective agency
20 rules. We are coordinating repeal with the
21 Department of Transportation to ensure that their
22 penalty schedule gets promulgated simultaneously
23 with the repeal. Does anyone have any questions
24 about this proposal?

1 August 25, 2016

2 MR. DEL VALLE: Is there a motion? Or
3 an abstention? Or is there a, a -- let me
4 rephrase that. All in favor. All opposed.

5 MR. SHPETNER: I'm abstaining.

6 MR. DEL VALLE: It is approved with one
7 abstention and one opposed.

8 MS. SALLOUM: And next we have the
9 adoption of the amendment to the DOB penalty
10 schedule, which added five new infractions and
11 amends two existing infraction related to
12 construction superintendents and site safety
13 managers and coordinators. We published this
14 proposed rule in the City Record on July 8, 2016.
15 We held a public hearing on August 9, 2016, and
16 we received no written comments and no one
17 testified at the public hearing, although two
18 people from the public did attend the hearing.
19 Does anyone have any questions on this, this rule
20 that's up for adoption?

21 MR. DEL VALLE: Is there a motion to
22 adopt?

23 MS. GRAHAM: One abstention.

24 MR. DEL VALLE: Oh, okay. Let me

1 August 25, 2016

2 rephrase that again because I asked for a motion.
3 All in favor. It's unanimous with one abstention
4 from Buildings.

5 MS. SALLOUM: Thank you.

6 MR. DEL VALLE: And last, DEP.

7 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT
8 OF ENVIRONMENTAL PROTECTION: Good morning.
9 Russell Pecunies, Assistant Counsel, Department
10 of Environmental Protection. DEP is requesting
11 the Board issue one cease and desist order this
12 month under the Sewer Code. This is for Inday
13 1178 LLC. Inday is an Indian restaurant located
14 at 1133 Broadway. An inspection late last year
15 determined that the restaurant needed to install
16 a grease trap for one of their sinks and grease
17 traps for each of two floor drains. When they
18 failed to comply, beginning in January, DEP,
19 Bureau of Wastewater Treatment issued a series of
20 notices of violations and Commissioners Orders
21 directing respondent to comply. Up through June,
22 there was still no compliance and the respondent
23 was noticed to appear at a mandatory compliance
24 meeting on July 27th with the Bureau of

1 August 25, 2016

2 Wastewater Treatment, which they failed to appear
3 for. Due to the continuing failure of the
4 respondent to comply with the requirement to
5 install the grease interceptors, DEP is asking
6 for the issuing order to cease and desist.

7 MR. DEL VALLE: Any questions? Is there
8 a motion? It's unanimous with one abstention.

9 MR. PECUNIES: Thank you. And DEP has
10 28 requests for cease and desist orders for
11 building owners who have failed to comply with
12 Commissioner's Orders to install backflow
13 prevention devices. In each of these cases, a
14 summons has been issued to the respondent, which
15 has been adjudicated in violation and respondent
16 is still not in compliance. Based upon which the
17 Department is asking the board to issue cease and
18 desist orders in each of these cases.

19 MR. DEL VALLE: Any questions? Is there
20 a motion? It unanimous with one abstention.

21 MR. PECUNIES: Alright. Thank you.

22 MR. DEL VALLE: That was short and
23 sweet. Is there a motion to enter into executive
24 session to discuss litigation? Oh, sorry about

1 August 25, 2016

2 that. Sorry, Kelly. Presealing reports.

3 MS. KELLY CORSO, ESQ., ASSISTANT
4 DIRECTOR OF ADJUDICATIONS, OATH: Good morning.
5 I'm Kelly Corso, Assistant Director of
6 Adjudications for OATH. And we have 19
7 presealing reports for today's Board. We have 13
8 cases that involve backflow violations, three
9 involve air code violations, and four that
10 involve noise code violations. For the backflow
11 cases and the air code cases, the hearing
12 officers in all those cases recommend no sealing
13 or other action based on the respondent's
14 evidence of compliance presented at the hearings.
15 For the noise code cases, for three of those, the
16 respondents presented evidence at the hearings of
17 work that was done to bring the cited kitchen
18 exhaust fans into compliance of the noise code.
19 And the hearing officers recommend, in all of
20 those cases, that DEP reinspect the equipment and
21 that the equipment remain unsealed only if the
22 initial reinspection by DEP and further
23 reinspections for a period of 180 days show no
24 violation. And the last noise code case, the

1 August 25, 2016

2 hearing officer recommends no further action and
3 that's based on a recent DEP inspection report
4 that indicated that the cited exhaust fan was
5 disabled and a new exhaust fan was installed.
6 That's it.

7 MR. DEL VALLE: Any questions? Is there
8 a motion to adopt? It's unanimous. Thank you.
9 Now, is there a motion to adjourn to executive
10 session to review litigation? That's adopted and
11 we'll wait a moment.

12 [OFF THE RECORD]

13 [ON THE RECORD]

14 MR. DEL VALLE: No one's outside? I
15 wonder why everybody leaves right after this.
16 Maybe I should leave something exciting for the
17 second part.

18 MR. SHPETNER: I have a question.

19 MR. DEL VALLE: A movie or something.

20 MR. SHPETNER: Yeah. Can we, can you
21 update the Board on where we stand in terms of
22 filling the open citizen vacancies?

23 MR. DEL VALLE: Yes, which is a bit of a
24 hairy issue considering the last two meetings we

1 August 25, 2016

2 were pretty close to not having a quorum. In
3 Sept-, the Mayor's Office of Appointments has
4 three people in the pipeline. One person has,
5 the Mayor has submitted the name of one person to
6 the City Council. The City Council's committee
7 on rules, privileges, and I forgot the rest of
8 the title, is supposed to have a hearing on the
9 person which, in this case is the sound, the
10 noise expert, I believe, in the first week of
11 September. They don't have a date yet. That's
12 just information as of yesterday afternoon. And
13 it's expected that the Council will vote on that
14 nomination towards the end of September at their
15 next stated meeting and hopefully it'll be before
16 our Board meeting and we can, we can have at
17 least one more board member then. The other two
18 individuals are still going through the vetting
19 gauntlet and hopefully by the end of 2016, we'll
20 be at full complement.

21 MR. SHPETNER: I thought there were only
22 two vacancies.

23 MR. PECUNIES: No, there are three.

24 MR. DEL VALLE: Three, I believe.

1 August 25, 2016

2 MR. SHPETNER: Two. Right? Rob and
3 Emily?

4 MS. HELAINE BALSAM, ESQ., DEPUTY
5 GENERAL COUNSEL, OATH: Oh, everybody's a
6 holdover.

7 MR. SHPETNER: Well, that's, that's
8 fair, but, I mean, there are two literal
9 vacancies. So you're--

10 MR. DEL VALLE: Oh. So maybe one of the
11 holdover guys, whom I don't know whom, is being,
12 is being considered for reappointment or
13 something.

14 MR. SHPETNER: You don't know whom?

15 MR. DEL VALLE: They haven't shared it
16 with me.

17 MR. SHPETNER: I'm surprised that you're
18 not aware of who the--

19 MR. DEL VALLE: No. Probably after they
20 put -- what they've done in the past in regard,
21 at least when I've been around, is that after
22 they do the vetting process, they tell me who it
23 is and then they ask us to talk to the person
24 and, and if they haven't been dissuaded after,

1 August 25, 2016
2 after they find out what's involved, then they,
3 they proceed after that. It's an insanely long
4 and tedious process. By the way,
5 parenthetically, I asked, I asked the head of
6 that office how many boards does the City have to
7 fill vacancies in and she said 273. Some of them
8 so obscure I can't even imagine what the heck
9 they are, but they are working on it. I know
10 that we've been harassing them for the last two
11 or three months to move on it. And we'll see
12 where the jolly, the yellow brick road takes us.
13 So that's where we're at. That's as much as I
14 know right now.

15 Is there a motion, by the way, to affirm
16 the appeals panels' decisions?

17 MS. GRAHAM: Yes.

18 MR. DEL VALLE: It's unanimous. Before
19 I ask to adjourn, I want to point out that
20 Helaine Balsam, who has been connected to ECB for
21 something like the last 30 years, is going to be
22 moving on. Over the last 30 years, well right
23 now she's the Deputy General Counsel, and I have
24 to actually read a list of all the stuff that

1 August 25, 2016

2 she's done, which is incredible.

3 MS. BALSAM: No, you don't.

4 MR. DEL VALLE: Yeah, I do. Yes, I do.
5 This is for posterity. This is being recorded,
6 you know, this, we're putting this in a time
7 capsule. She's been Managing Attorney for ECB's
8 Brooklyn office. She's heard thousands of cases
9 relating to environmental issues in the City of
10 New York. She's a permanent member of the
11 faculty of the New York City Administrative
12 Judicial Institute. She's held adjunct faculty
13 positions at New York Law School, the City
14 University of New York. And she has drafted
15 countless rule amendments and changes and is
16 almost singlehandedly responsible for guiding the
17 revision, the largest revision of Administrative
18 Law Rules in the City of New York in the last 30
19 years. And she's going to be Executive Director
20 and General Counsel of the Loft Board starting in
21 a couple weeks.

22 MS. BALSAM: Monday.

23 MR. DEL VALLE: Monday. And I just
24 wanted to acknowledge our gratitude for all this

1 August 25, 2016

2 time that she, and all of her contributions and
3 I'm happy for her and at the same time not so
4 happy for us that she's leaving. And if anybody
5 wants to hang around after the meeting, we've got
6 some stuff over here and we can hang around and
7 mingle and say thanks again.

8 Is there a motion to adjourn?

9 MR. SHPETNER: Can we applaud first?

10 MR. DEL VALLE: Yes.

11 [APPLAUSE]

12 MR. DEL VALLE: Let the record show
13 there was applause. Are we adjourned? We are
14 adjourned. Thank you.

15 (The board meeting concluded at 10:09
16 A.M.)

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August 25, 2016

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Environmental Control Board, August 25, 2016

CERTIFICATE OF ACCURACY

I, Lea Simmons, certify that the foregoing transcript of Environmental Control Board on August 25, 2016 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



A handwritten signature in cursive script, appearing to read "Lea Simmons", written in black ink. The signature is fluid and somewhat stylized, with a long horizontal stroke at the end.

Date: August 26, 2016

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018